

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

60843

FILE: B-186066

DATE: May 4, 1976

98979

MATTER OF: Jets Services, Inc.

## DIGEST:

1. Determination to set aside procurement under section 8(a) of Small Business Act is a matter for contracting agency and SBA, and is not subject to legal review by GAO.
2. Question of whether proposed 8(a) concern is still in need of further assistance to become self-sustaining is within discretion of SBA, and is not subject to legal review by GAO.

Jets Services, Inc. (Jets), has protested against the determination by the Department of the Army to set aside a procurement for military kitchen police service at Fort Carson, Colorado, under the Small Business Administration's (SBA) 8(a) program. Jets also alleges that the prospective awardee, Grove Contract Services, Inc. (Grove), is not an eligible 8(a) program concern. Alternatively, Jets contends that even if Grove had originally been an eligible 8(a) concern, there is no proper justification for the present certification of Grove as it is a flourishing and viable company.

We held in Baltimore Electronic Associates, Inc., B-185042, February 17, 1976, 76-1 CPD 105, that GAO will no longer review determinations by contracting agencies to not set aside procurements under section 8(a) of the Small Business Act. The decision states in pertinent part that:

"Section 8(a) of the Small Business Act (SBA) (15 U.S.C. 637 (a)) authorizes the SBA to enter into contracts with any Government agency having procurement powers, and the contracting officer of such agency is authorized 'in his discretion' to let the contract to SBA upon such terms and conditions as may be agreed upon between SBA and the procuring agency.

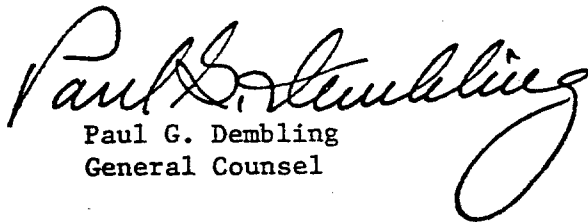
It is clear that a determination not to set aside a procurement for an 8(a) award is not subject to legal review by our Office. See Wallace & Wallace Fuel Oil Company, Inc., B-182625, April 1, 1975, 75-1 CPD 191; Alpine Aircraft Charters, Inc., B-179669, March 13, 1974, 74-1 CPD 135. Whether or not a procurement should be set aside under section 8(a) is a matter for the contracting agency and the SBA to decide." (Emphasis in original.)

As noted in the above-cited case, "Whether or not a procurement should be set aside \* \* \* is a matter for the contracting agency and the SBA to decide." In view of the broad discretion afforded the contracting officer by the applicable statute, we do not believe that a determination to set aside a procurement under section 8(a) is subject to legal review by our Office.

On the issue of whether Grove needs the present 8(a) assistance to become a self-sustaining firm, the question of how much aid a concern needs to become self-sustaining is also a judgmental one for SBA and not our Office. See Kings Point Manufacturing Company, Inc., 54 Comp. Gen. 913 (1975), 75-1 CPD 264. See ABC Management Services, Inc., B-182533, October 21, 1975, 75-2 CPD 245.

Jets also requests that SBA promptly implement the guidelines and recommendations outlined in the Comptroller General's report to Congress entitled "Questionable Effectiveness of the 8(a) Procurement Program" (April 16, 1975). However, the report relates to proper administration of the 8(a) program rather than to the legality of awards thereunder.

Accordingly, the issues raised by Jets are not subject to legal review by the GAO and the protest is dismissed.

  
Paul G. Dembling  
General Counsel